IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANTS REFERENCE NO.4 OF 1988

The Institute of Chartered Accountants of India, a statutory body, incorporated under the provisions of the Chartered Accountants Act, 1949, and having its office at Indraprasthamarg, New Delhi 110 002 .. Petitioner.

V/s.

P.L.Tapdiya, of Wardha, Indian Inhabitant, having its office at C/o. M/s. P.L. Tapdiya, Sujata Bhawan, Bajaj Road, Wardha, Maharashtra State .. Respondent.

Dr. Virendra Tulzapurkar, Senior Counsel with Ms. S. Srikrishna i/b. Kanga & Co. for the petitioner.
Mr.S.S. Pakale for Union of India.
Mr.S.S. Jain for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 6TH AUGUST, 2004.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

. Mr.P.L. Tapdiya, Chartered Accountant is a member of the Institute of Chartered Accountants of

India. One Mr.A.R. Chitlangi who was the articled clerk with Mr.P.L. Tapdiya (for short 'the respondent') filed a complaint before the Institute of Chartered Accountants of India alleging the professional misconduct of the respondent.

2. According to the complainant he was articled clerk with the respondent for the period from January 1, 1976 to February 4, 1977 but during that period he was not paid monthly stipend. The respondent was alleged to have committed breach of Regulation 32B of the Chartered Accountants Regulation, 1964. The complaint was referred to the Disciplinary Authority for enquiry. The respondent filed written statement and set up the defence that the complainant used to remain absent from his duties frequently without informing the office; he was undisciplined and had irregular behaviour. During the pendency of the proceedings before the Disciplinary Authority, the respondent remitted entire amount of stipend to the complainant without prejudice to his contentions.

3. The Disciplinary Authority on conclusion of enquiry held that the monthly payment of stipend was not made by the respondent to the complainant,

rather no payment whatsoever was made and the respondent clearly contravened Regulation 32B of the Chartered Accountants Regulation, 1964. The Disciplinary Authority, accordingly, concluded that the respondent was guilty of professional misconduct and forwarded its report to the Council. The Council accepted the report of the Disciplinary Authority and recommended to this Court that the respondent be reprimanded. This is how this reference is before us under Section 21(5) of the Chartered Accountants Act, 1949.

4. Having considered the available material, we find no justification to take a view different from the view of the Disciplinary Authority and the Council.

5. There appears to be no challenge to the aspect that the complainant was working as articled clerk with the respondent for the period from January 1, 1973 to February 4, 1977. There is also no challenge that during the article period, the complainant was not paid his stipend. It is also not in dispute that under Regulation 32B the respondent as a member of the institute was required to pay monthly stipend to the complainant. The explanation

of the respondent for non-payment of stipend was that the complainant would remain absent from his duties frequently without informing him and that he was undisciplined and had irregular behaviour. The explanation of the respondent cannot be accepted and has rightly not been accepted in view of the admitted position that the respondent had given to the complainant form under Section 20 i.e. the period during which the complainant worked with the respondent. The fact that the respondent signed form No.20 and gave it to the complainant would show that the complainant worked as articled clerk with the respondent for the concerned period. If the complainant had remained absent from his duties frequently without informing the respondent or the complainant was undisciplined or had irregular behaviour, obviously these facts would have found place in form 20 but that is not so and the only thing which the respondent recorded in form No.20 was that the performance of the complainant was not satisfactory. The explanation obviously by the respondent, thus was not acceptable.

6. We, accordingly, accept the finding of the Disciplinary Authority and the Council that the respondent was guilty of professional misconduct

within the meaning of Section 21 read with Section 22 of the Chartered Accountants Act, 1949 and clause (i) of Part II of Second Schedule to the said Act for having contravened Regulation 32B of the Chartered Accountants Regulation, 1964 by not paying the monthly stipend to the complainant. We, accordingly, accept the recommendation of the Council that the respondent be reprimanded.

6. Order accordingly.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)